Supreme Court, U.S.
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No. 00-1737

IN THE
Supreme Court of the United States

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.
and
WELLSVILLE, OHIO, CONGREGATION OF JEHOVAH'S WITNESSES, INC.

Petitioners,

v.

VILLAGE OF STRATTON, OHIO and JOHN M. ABDALLA, Mayor of the Village of Stratton, Ohio in His Official Capacity,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF *AMICUS CURIAE* THE OHIO MUNICIPAL LEAGUE

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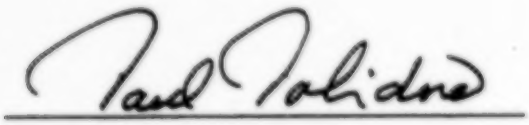
CONSENT OF THE PARTIES

The Ohio Municipal League, *amicus curiae,* has received the consent of both parties to file the within brief, pursuant to Rule 37.1 of the rules of this court. Below is the written consent of the Petitioners.



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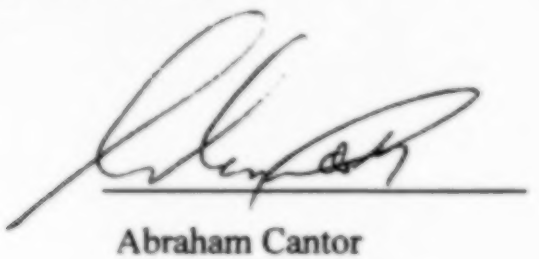
CONSENT OF THE PARTIES

The Ohio Municipal League, *amicus curiae,* has received the consent of both parties to file the within brief, pursuant to Rule 37.1 of the rules of this court. Below is the written consent of the respondent's counsel.



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INTRODUCTION

At the heart of this case is the obligation, the right and the ability of local government to protect persons in their homes. The Respondent Village of Stratton has, by the passage of Ordinance 1998-5 and Chapter 116 of the Codified Ordinances, sought to protect the rights of the people of the Village to be safe their homes. The ordinance allows the people not to be bothered at their homes, if that is **their** choice. The key fact which makes Stratton ordinance constitutional is that individuals, i.e. property owners/occupants (not the government), have a means of expressing their right to decide who will be invited onto their property. This is not a "free expression in a public forum" or "free exercise of religion" case; this is a case about the protection of the rights of individuals to be left alone in their own homes.

The Ohio Municipal League believes that local government has the right and duty to protect people in their

homes. Under the facts of this case, the rights of private property owners/occupants are being protected by the Village, at the express direction of the owner/occupant, from unwanted intrusion by solicitors, including the Petitioners.

Petitioners' constitutional right to practice their religion and to speak freely and "anonymously" in traditional public *fora* certainly does not give them a special right to enter upon private property, against the wishes of the private property owner/occupant. This court is not bound by law or logic to create this special right, and the Ohio Municipal League asks this court affirm the decision of the Sixth Circuit Court of Appeals.

STATEMENT OF FACTS

The Ohio Municipal League hereby adopts, and incorporates by reference, the facts as presented by the Village of Stratton. The League also notes, with interest, that the Petitioners state, at page 2 of their Brief:

> "As part of their public ministry, individual Jehovah's Witnesses offer Bibles and Bible-based literature published in the Watchtower Bible and Tract Society ("Watchtower") to anyone who is interested in receiving it free of charge." (Citation omitted, emphasis added.)

The underscored portion of the above paragraph emphasizes that the Petitioners, by their own admission, are only seeking to contact people who are "interested" in being contacted.

Looking at the ordinance in a different light, the Village of Stratton is actually assisting the Petitioners by providing them with a ready-made list of people in the Village who are "interested" in hearing from the Petitioners, and a list of people who are not "interested" in hearing from the petitioners. Such a list could be viewed as a valuable time saver: the Petitioners will not be talking with people who are not "interested" in speaking to the Petitioners.

Since some people in the Village do not wish to hear from the Petitioners, by the Petitioners' own statement of intention, they should be willing to honor the wishes of the private property owner/occupant. The freedom to exercise one's religion cannot supercede another's right to be left alone in his or her home.

THE HOME AS CASTLE

This court has commented on the sanctity which the law accords the home:

> "In 1604, an English court made the now-famous observation that 'the house of every one is to him as his castle and fortress, as wall for his defence (sic) against injury and violence, as for his repose.' Semayne's Case, 77 Eng. Rep. 194, 5 Co. Rep. 91a, 91b, 195 (K.B.) In his commentaries on the Laws of England, William Blackstone noted that
>
> 'the law of England has so particular and tender a regard to the immunity of a man's house, that it stiles it to his castle, and will never suffer it to be violated with impunity: agreeing herein with the sentiments of ancient Rome... For this reason no doors can

> in general be broken open to execute any civil process; though, in criminal causes, the public safety supercedes the private.' William Blackstone, 4 Commentaries on the Laws of England 223 (1765-1769).
>
> The Fourth Amendment embodies this centuries old principle of respect for the privacy of the home: 'The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.' U.S. Const. Amd. IV. See also United States v. United States District Court for E.D. Michigan, 407 U.S. 297, 313, 92 S.Ct. 2125, 32 L.Ed.2d 752 (1972) ('[P]hysical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed')."

Wilson v. Layne, 526 U.S. 603, 119 S.Ct. 1692, at 1697, 143 L.Ed.2d 818 (1999).

Like the Fourth Amendment, the ordinance in the instant action is law designed to protect the fundamental right of the property owner. In this instance, the right is to exclude others from the owner's property. It does not directly affect

the Petitioners' right and ability to practice their religion in any way, unless they seek to enter upon private property. Not every person who seeks to go door to door is as morally upstanding as are the Petitioners, and the Village has sought a content-neutral means of accomplishing its goal of protecting people in their homes by obtaining information (including identity) from people who seek to enter on the property of strangers. This likely provides a prophylactic effect against those who would perpetrate fraud or harm under the guise of a door-to-door solicitor, and certainly protects the property owners/occupants by informing would be solicitors, or others, of the wishes of the owners/occupants.

The Petitioners, by challenging the Stratton ordinance, are seeking to violate the wishes of others who seek to exercise their right to be left alone in their homes. This result is not mandated by the Constitution. Rather, as noted above, the law

has a rich tradition of protecting the rights of property owners or occupants to be left alone in their homes/castles.

NOTICE TO TRESPASSERS

Under Ohio statutory law, the property owner has the right to exclude others from private property. If a person enters onto private property, after being notified that he or she is not permitted on that property, a charge of trespass may be brought. Ohio Revised Code §2911.21 provides, in pertinent part:

> "(A) No person, without privilege to do so, shall do any of the following:
> (1) Knowingly enter or remain on the land or premises of another;"

The posting of a sign is the usual mode of notifying the public that uninvited access to private property is not welcome, and the Stratton Ordinance provides for the posting of a sign to keep solicitors from entering upon the property of the home owner/occupant.

The posting of a sign, however, certainly need not be the exclusive method of permissible notification. The Village of Stratton has devised a very effective method of communicating the intentions of the Village's property owners to exclude would be door-to-door solicitors and canvassers. The Village allows the property owner/occupant to register at the Village Hall as a person who does not desire to receive visits from uninvited individuals.

This is analogous to the Village permitting the property owner to move the "No Solicitors" sign from the door step of the home to the Village Hall. Further, it collects all of the "signs" in one place. Any "burden" which is imposed on the Petitioners by prevcnting them going door to door is being imposed **not** by the Village, but by the **property owner/occupant**, i.e. the Village resident.

The Village's registration requirement is a reasonable means to ensure that the persons who wish to go door to door

in the Village have been advised of the permissible limits of such solicitation, including notification of those individuals who do not wish to be solicited. The "permission" to knock on a door is, ultimately, being granted or denied solely by the owner of the property, not by the Village.

The registration also ensures that the property owner/occupant can call the Village Hall to find out whether a solicitor is who he of she claims to be, and thereby protects the home owner/occupant from possible fraud or other criminal misconduct. No discretion for granting or denying a permit is being reposed in the Village, the Village is merely the collector of information which is being collected for the protection of individuals.

The subject ordinance's manifest protection of private property rights distinguishes this case from the public forum cases, which have been decided in favor of would be anonymous speakers. See, e.g. *Buckley v. American*

Constitutional Law Foundation, Inc. 525 U.S. 182 (1999), *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995).

No case exists which establishes that the "right" to "anonymity" is greater than a property owner/occupant's right to exclude people from his/her property. This should not be the first such case.

It is also somewhat ironic that a person who seeks to have personal, face to face contact with a stranger at the stranger's home is also seeking to be "anonymous." Clearly, such a rule could have severely adverse consequences if the "anonymous" door-to-door travelers lack the Petitioners probity.

THE CHOICE OF THE HOMEOWNER

The lower court's ruling is consistent with this Court's approval of the concept of a proposed form of regulation which was identified in *Martin v. City of Struthers*, 319 U.S. 141, 63 S.Ct. 862, at 866, 87 L.Ed.1313 (1943):

> "The National Institute of Municipal Law Officers has proposed a form of regulation to its member cities which would make it an offense for any person to ring the bell of a householder who has appropriately indicated that he is unwilling to be disturbed. This or any similar regulation leaves the decision as to whether distributors of literature may lawfully call at a home where it belongs -- with the homeowner himself. A city can punish those who call at a home in defiance of the previously expressed will of the occupant and, in addition, can by identification devices control the abuse of the privilege by criminals posing as canvassers. In any case, the problem must be worked out by each community for itself with due respect for the constitutional rights of those desiring to distribute literature and those desiring to receive it, as well as those who choose to exclude such distributers from the home." (Emphasis added, footnotes omitted.)

Id., at 148, 149, 63 S.Ct. 862, at 866, 87 L.Ed.1313.

By this language, this court expressly recognized the type of legislation adopted by the Village of Stratton which leaves the decision to exclude "***where it belongs -- with the home owner***."

INCREASED SAFETY CONCERNS

Recent events stemming from the terrorist attacks on New York City and the Pentagon, the anthrax mailings and earlier acts of terrorism clearly exhibit a need for government to be able to perform one of its principal functions: the protection of people. In order to do this, the government needs to know the identity and purpose of strangers who seek to gain access to private property. It really should not matter whether access is being sought to be a farmer's cattle feed lot in Nebraska, a trailer park in Stratton, Ohio or a large residence in Northern Virginia.

Those who are merely asked to register and comply with reasonable regulations in order to gain the privilege of entering upon private property (with the permission of the owner), may constitutionally be required to identify themselves. A "right" of anonymity, when seeking access to private property without the prior consent of the

owner/occupant of that property, invokes images of a parade of horribles. The images of this parade is far more vivid today than they were before September 11, 2001.

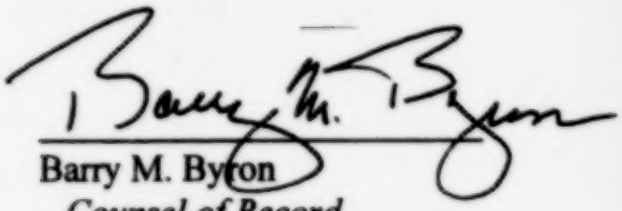
CONCLUSION

This court should affirm the ruling of the lower court. Contrary to Petitioners' allegations, Stratton Codified Ordinance Chapter 116 is a valid exercise of the Village's police power to protect people in their homes from people to whom they do not wish to speak.

No claim of a right of "anonymity" should be used in a way which may jeopardized people in their homes. Unlike public *fora* cases, this case involves competing rights of private individuals; the state, by and through its local governments, has the right and duty to protect people in their homes. Freedoms of speech and religion ought not be used as swords against this primary governmental function, particularly when other *fora* for expression exist.

The judgment of the Sixth Circuit Court of Appeals should be affirmed.

Respectfully submitted,



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